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NO. 85-939

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MICKI ANN RAMIE,
Petitioner

v.

CITY OF HEDWIG VILLAGE,
WILLIAM RUSH and REX WHITE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
to the
COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner's first question, of the two under "Questions Presented for Review," is inaccurate in (1) referring to Defendants' investigation as "a sham" (2) characterizing what even Plaintiff (the Petitioner) concedes were no more than three questions regarding gender as repeated demands (3) characterizing a question whether Plaintiff is a Christian, freely and promptly answered by Plaintiff in the affirmative, as a demand made upon Plaintiff, and (4) failing to mention that the statement to Plaintiff to identify herself on her Texas driver's license as a man came after she, by her own admission, stated to Defendants that she is a man.

The second of Plaintiff's two "Questions Presented for Review" might foster the mistaken impression that the exclusionary rule is in any way involved in this case, when in fact no physical evidence was ever seized while investigating Plaintiff for assault on a child, carrying a concealed weapon, and impersonating a police officer. Further, the question is raised for the first time at this stage of the proceedings and should therefore not be considered, to the extent it invites this Court to create a new legal remedy for the purpose of deterrence.

Plaintiff's rephrasing of her first question, in her "Preliminary Statement" likewise does not state any issue this Court has to consider. The record will reflect a maximum of three questions to Plaintiff regarding her gender, one inquiry whether she is a Christian, and one suggestion that (since she is) she "turn to Jesus Christ" for comfort with her personal problems. The only questions this Court has to decide are whether these facts

present any basis for even considering an expansion of the constitutional right of privacy identified in the *Griswold v. Connecticut* line of cases, to embrace gender identity and religious affiliation; and if so, whether such an expansion should be announced.

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

COMES NOW THE CITY OF HEDWIG VILLAGE, Respondent (Defendant below), and would show the Court as follows regarding Plaintiff's Petition for Writ of Certiorari:

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit, published at 765 F.2d 490, is reproduced in the Appendix of this brief for ease of reference.

STATEMENT OF THE CASE

Disposition Below

Plaintiff accurately states the disposition of this case in the court of appeals, as far as she goes. It should be noted, however, that Defendants, in their respective appellant's briefs to the court of appeals, each raised six points of error, but the court of appeals only found it necessary to address the argument that there is no evidence to support the finding of a constitutional privacy violation. There would therefore remain for disposition by the court of appeals, even in the event of a ruling by this Court for Plaintiff on the privacy issue, distinct appeal points relating to municipal liability, evidentiary rulings, and the damages awarded.

Statement of Facts

Plaintiff has offered this Court a "Statement of Facts" six pages in length, reciting Plaintiff's version of events without even a hint that it was vigorously disputed at trial, and without mention of several facts crucial to an understanding of Defendants' investigation. Defendant City of Hedwig Village discusses some of the omitted facts below, since Plaintiff's Petition for a Writ of Certiorari is essentially a plea to this Court to declare a new "strand" of the right of privacy, prompted by Plaintiff's description of a seemingly outrageous offense.

Plaintiff's statement of facts does concede one extremely important point: that Plaintiff met the description of the suspect defendant police officers were looking looking for: "A short, white male, deep voice, broad shouldered, wearing a vinyl wig" over "sideburns and a beard," and dressed in a woman's pantsuit. Plaintiff stresses to this Court that the description is inaccurate, as it is, since Plaintiff is a woman. Defendant White, however, was uncertain of Plaintiff's gender even during his questioning of her. (V, 58-59, 63-66) (All record references are to volume and page numbers). Plaintiff had been identified by the apartment manager (a woman) as "a he/she." (V, 20-21). Plaintiff's appearance at the police station matched that given by the complaining witness closely enough that Sergeant White believed her to be a man. (V, 32, 71). Lieutenant Rush also believed Micki Ramie to be a man. (VII, 80). Plaintiff's own psychiatrist testified that he could readily understand how a person could take Micki Ramie for a man. (VI, 86).

The discussion about gender ensued when Plaintiff displayed a Texas driver's license identifying her as a woman (V, 58), although she had been identified as and appeared to be a man. Chief of Police James Jones testified that an officer who is unsure of a suspect's gender, based on personal observation, need not simply take the suspect's word for it. (VII, 181). Beard growth, an obvious wig, and a male-sounding voice are cause for questioning a suspect's claim to be female. (VII, 182). It is not good police work to simply accept a suspect's word for something, even his own gender, when direct observation by the officer involved raises doubts as to the accuracy of the information being given by the suspect. (VII, 181). When such circumstances suggest

that a suspect may, for whatever reason, be lying about his gender, Chief Jones testified that more than one question regarding gender would certainly be appropriate. (VII, 181).

Plaintiff herself raised the subject of her unhappy childhood, with problems relating to gender identity. (V, 72-73). Lt. Rush, in an effort at compassion which he no doubt has since come to regret, then verified that Plaintiff is a Christian before suggesting that she turn to Jesus Christ. (VII, 70-71). Plaintiff adds a claim that the same person who suggested she to turn to Jesus Christ also called her "an abomination in the eyes of the Lord," and rests on the suggestion and the alleged insult in arguing that Defendant Rush and his employer violated a right to privacy in religion.

Defendant will not attempt to rebut or put in context, through additional record references, the other portions of Plaintiff's statement of facts, since the foregoing is all that needs to be stated in connection with the two questions Plaintiff presents for review.

SUMMARY OF ARGUMENT

Petitioner would have this Court grant a writ of certiorari based upon an asserted intrusion into her gender classification and religious beliefs. Granting her the relief she asks would require creation of an entirely new "strand" of the constitutional right to privacy. That right has come to embrace the individual's interest in avoiding disclosure of certain personal matters, and in retaining his independence in making certain kinds of important decisions. Micki Ramie's gender identity cannot reasonably be considered a matter which is private,

and which she is not required to disclose to the police in the course of an investigation in which she has been named by the complaining witness as a person who assaulted a child and impersonated a police officer. Plaintiff certainly did not have to disclose her religious affiliation to anyone, but she freely did so, without protest, when asked about it. Plaintiff can hardy dare claim that a constitutional right to keep her religious affiliation private (assuming *arguendo* that such a right exists) is violated by merely asking whether she is a Christian, with no hint of compulsion by the questioner and no sign of reluctance to answer by the Plaintiff.

Plaintiff, by referring to Defendants' "intrusion" upon her privacy, evidently means to say that Defendants interfered with her right to make certain constitutionally protected decisions. The first of her questions presented for review is not explicit about whether the advice to turn to religion and the instruction to correctly reflect her gender on her driver's license supposedly violate a constitutional interest in making the decisions involved, or whether they constitute grounds for the creation of a new "strand" of the constitutional right of privacy. However much a departure from normal work it may have been for Defendant Rush to counsel Plaintiff to turn to Jesus Christ, after ascertaining her Christianity, that advice cannot possibly be twisted enough to make it appear even an attempt to interfere with Plaintiff's religious choice. This would be true even it Lt. Rush had not first verified Plaintiff's Christianity, knew instead that she is not a Christian, and barked his advice at her like a drill sergeant.

Plaintiff was indeed told to correct her driver's license so that it would properly reflect her gender as male,

but Plaintiff's petition to this Court glosses over the fact that this statement by Defendant White followed Plaintiff's statement to Sgt. White and Lt. Rush that she is male. Plaintiff admitted making this statement to the defendant officers. (V, 72-73). Defendants, far from interfering with Plaintiff's identification of herself as male or female, *asked* her about her gender, and did not instruct her to identify herself as a man on her Texas driver's license until she stated herself to be a man. The focus of the petition for certiorari upon conduct which would, at worst, (accepting all of Plaintiff's allegations) amount to rudeness, reflects the very insubstantial nature of the federal question brought to this Court. The constitutional right of privacy may await further definition by this Court, but its expansion to embrace gender and religion is hardly justified by a case in which disclosure of gender identity is at stake on one hand, and a single religious question and piece of advice is complained of on the other.

ARGUMENT

I. The court of appeals properly refused to announce, given this record, a never-before identified right of privacy in (1) gender identity and (2) religious affiliation.

(A) Gender Identity

Plaintiff concedes, as she must, that there is no precedent for her argument that gender and religion are constitutionally protected areas of privacy. (Petition, p. 12). She instead argues that this Court's protection of decisions regarding marriage, procreation, and contraception, in *Griswold v. Connecticut*, 381 U.S. 479 (1965) and later

decisions, necessarily "protects" her against repeated questions regarding her gender. It is ironic that Plaintiff can raise this as an issue only because her gender was *not* obvious to the defendant police officers and to a complaining witness, all of whom took her to be a man rather than a woman. Since gender is almost always obvious to any observer, this Court would open a Pandora's box of litigation to hold, as Plaintiff urges, that there is a privacy interest of constitutional dimension in gender identity.

Griswold v. Connecticut and this Court's subsequent privacy decisions all protect privacy in choice. Plaintiff urges this Court to treat a privacy interest in an ordinarily obvious physical attribute as it has privacy interests in choices people make about the most intimate aspects of their lives. Gender does make possible very intimate and private activities, and is vastly more important than the "pornographic tastes or banking records" Plaintiff refers to (Petition, p. 14), but it is much less private, and not, in itself, intimate.

Katz v. United States, 389 U.S. 347, 350 (1967) states a principle long recognized by this Court and central to the privacy issue raised by Plaintiff: that "the protection of a person's *general* right to privacy—his right to be let alone by other people—is . . . left largely to the law of the individual states." This Court put the matter even more strongly in rejecting another petitioner's claim to a broader protection than is granted by 42 U.S.C. § 1983, in *Paul v. Davis,* 424 U.S. 693, 700 (1976):

> "Violation of local law does not necessarily mean that federal rights have been invaded. The fact that

> a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States."

The court went on to say, in *Paul,* that the identification of Plaintiff Davis as an active shoplifter, in a circular distributed to merchants prior to dismissal of the shoplifting charges against him, left him with a "right of privacy" action that "is far afield from [the] line of decisions" by this Court defining the scope of that constitutional tort. *Id.* at 713. Micki Ramie's claim is equally far afield. *Whalen v. Roe,* 429 U.S. 589 (1977) protects plaintiff's interest in avoiding disclosure of certain personal matters, but defendant's briefing below, and the decision of the court of appeals, well demonstrates why Micki Ramie's gender could not be closed for discussion during a police investigation. The same decision acknowledges Plaintiff's interest in independence in making certain kinds of important decisions, but a citizen's decision to misstate his gender on his driver's license can hardly be one he is free to make independently, or one which is "important," as this Court used the word. *Id.* at 599-600. Reasonable regulation of the exercise of even the most fundamental rights—such as marriage—is constitutionally permitted. *Zablocki v. Redhail,* 434 U.S. 374 (1978). If Defendants, knowing Plaintiff to be a woman, had coerced her into identifying herself on her driver's license as a man, Plaintiff would have a strong argument before this Court. The record citations above, however, demonstrate clearly that Sgt. White told but never coerced Micki Ramie to identify herself as male on her driver's license because she appeared to be male, and because she had just stated she is male.

The opinion of the court of appeals, based on a careful examination of the entire record at trial, shows a weighing of the claimed privacy interest against the Defendants' "legitimate interest in questioning persons suspected of committing crimes." (Appendix, p. 5). The court squarely addressed the essence of Plaintiff's claim: that the *manner* in which Defendants Rush and White spoke to her was so offensive that it had to violate some right, which Plaintiff decided was her constitutional right to privacy. Without explicitly ruling on the existence of the alleged constitutional privacy interest in gender and religion, the court of appeals found no evidence of any privacy violation. The court, addressing Plaintiff's claim that only a constitutional tort action could vindicate her rights, observed that "state tort remedies may also be available." (Appendix, p. 5).

Plaintiff's counsel made the tactical decision to refrain from asserting the invasion of privacy action which is judicially recognized under Texas law, which would not have imposed upon Plaintiff the burden of charting new law, with intemperate language her only argument for doing so. (*see* Hedwig Village's Reply Brief below, at p. 15). Federal civil rights law affords advantages of attorney fee and costs recovery, while Texas tort actions open to Plaintiff would not only have lacked those advantages, but would have presented no avenue for recovery against the City of Hedwig Village, protected by sovereign immunity under Texas law. A sensible plaintiff's attorney would anticipate collecting at least a part of a judgment against a municipality, but not much of one against an individual police officer. Plaintiff's § 1983 lawsuit and appearance before this Court is explained by a gamble to obtain a collectible judgment, in preference

to pursuing a judgment that (if obtained) would stand up under state tort law, but offer much less hope for collection. There is no substantial federal question here, and barely the facade of one.

(B) Religious Affiliation

Plaintiff, in support of her claim that her right of privacy in religion was violated, offers no closer guidance than a decision noting the very private nature of religion. That religious belief is private, and protected against governmental intrusion, does not argue against the decision reached by the court of appeals. No part of the record suggests that Defendants interfered with or intruded upon Plaintiff's holding of or exercise of any religious beliefs. Before suggesting that Plaintiff turn to Jesus Christ for help, Lt. Rush took care to verify that Plaintiff is a Christian. (VII, 70-71). Plaintiff freely stated her religious belief when asked, so that even granting the impertinence of the question, it hardly amounts to "governmental intrusion."[1] The only U. S. Court of Appeals to have considered this issue held that an inquiry about religion does not violate the First Amendment. *Lujan v. United States,* 209 F.2d 190 (10th Cir. 1953).

Granting for the sake of argument that the same Lt. Rush who advised Plaintiff to turn to Jesus Christ for comfort would also tell her she is "an abomination in the eyes of the Lord," such an insult cannot reasonably be construed as an invasion of Plaintiff's religious privacy.

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1. A plausible basis for writing religion into the group of fundamental liberties to which there attaches a privacy interest *might* be presented if any of Defendants had attempted to force Plaintiff to profess or practice particular religious dogma, but such an act is nowhere to be found in the record.

It demands no information from her, and tells her nothing about how she must profess or practice her religion. If made, it would simply be a rude and inappropriate remark, as opposed to a constitutional violation.

II. The decision of the court of appeals leaves in place all tort remedies to redress police misconduct.

Plaintiff's second argument for a writ of certiorari can be reduced to the proposition that a decision declining to add to existing rights has the effect of minimizing existing rights. Plaintiff admits and her petition reflects a lack of authority for her constitutional privacy argument; yet she is pleading for the birth of her tort remedy while claiming at the same time that it has been "minimized." The decision of the court of appeals not only leaves unaffected, but specifically refers Plaintiff to, tort remedies under state law. (Appendix, p. 5). Plaintiff's real problem with the decision of the court of appeals is not its restriction of her tort remedy, but rather its denial of recovery to her, based upon the record.

The court of appeals took Plaintiff's privacy claim seriously enough, notwithstanding the lack of precedent, to explicitly weigh the asserted invasion of privacy against the legitimate investigative need for gender information. (Appendix, p. 4). The court of appeals did treat plaintiff's claim as though the asserted invasion of privacy tort might embrace gender and religion; the court simply found no evidence establishing a constitutional violation in this record. This Court need not hear this petition in order to redress any unduly restrictive reading of its privacy rulings, for quite the contrary occurred below.

III. Accepting *arguendo* all allegations of rudeness and impropriety, Plaintiff has not shown any violation of constitutional scope.

It does not diminish the importance of due process to note that the last refuge of a petitioner whose factual and legal arguments have been exhausted is frequently the claim that his adversary's conduct violated the principles of due process. So it is with Plaintiff's third reason for allowance of a writ. No argument is offered to show how any of the lines of due process decisions affords Plaintiff a cause of action for offensive language. Circuit rulings are to the contrary. *Collins v. Cundy,* 603 F.2d 825 (10th Cir. 1979); *Miner v. Brackney,* 719 F.2d 954 (8th Cir. 1983); *see also Johnson v. Glick,* 481 F.2d 1028 (2nd Cir. 1983). Plaintiff closes most inappropriately with an excerpt from *Rochin v. California,* 342 U.S. 165, 173 (1952), likening by implication "the brutal conduct which naturally enough was condemned by the court" in *Rochin* to several alleged insulting statements made by police officers in the course of an investigation in which Plaintiff was, by her own admission, never touched. (IV, 121-122).

Community expectations regarding politeness by lawmen readily explain why an average jury, given the chance, might return a plaintiff's verdict under the circumstances presented in the district court. It is the task of judges to interpose the requirements of the law between a claim for damages and the freedom of a jury to award the claimant those damages. The district court failed to do so, but the court of appeals performed its function as it should, not even having to go beyond this defendant's first appeal point in order to determine

the insupportability of the verdict. Micki Ramie's Petition for a Writ of Certiorari is the third in her line of pleas that she get and keep a verdict, "regardless of whether any particular constitutional rights were violated" by Defendants. (Appellee's brief, p. 15). Although she wisely couches her petition to this Court in reliance on the Constitution upon which her verdict rests, Plaintiff's argument remains one to ignore applicable precedent, or change it, in order to punish allegedly outrageous (verbal) conduct. That plea is properly directed to the state of Texas.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent City of Hedwig Village prays that the Petition for Writ of Certiorari be denied for failure to present a substantial federal question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three (3) true and correct copies of this response to Petition for Writ of Certiorari have been delivered by certified mail, return receipt requested, to the following counsel of record:

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APPENDIX

Micki Ann RAMIE,
Plaintiff-Appellee,

v.

CITY OF HEDWIG VILLAGE, TEXAS, et al.,
Defendants-Appellants.

No. 84-2323.

United States Court of Appeals,
Fifth Circuit.

July 15, 1985.

Civil rights action was brought against city and police officers alleging violation of plaintiff's constitutional right to privacy. The United States District Court for the Southern District of Texas, John V. Singleton, Jr., Chief Judge, directed a verdict in favor of one defendant, and awarded judgment on jury verdict in favor of plaintiff, and city and two police defendants appealed. The Court of Appeals, Reavley, Circuit Judge, held that government's interest in conducting criminal investigations outweighed any invasion of plaintiff's privacy and therefore plaintiff failed to present evidence that her constitutional rights were violated by police questioning about her gender and religious beliefs; furthermore, allegedly abusive manner in which the questions were asked did not amount to an unconstitutional invasion of privacy.

Reversed.

Appeals from the United States District Court for the Southern District of Texas.

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

REAVLEY, Circuit Judge:

Micki Ann Ramie brought a civil rights action, 42 U.S.C. § 1983 (1982), against the City of Hedwig Village, Rex White, William Rush, and Jimmy Jones for violating her constitutional right to privacy. After the district court directed a verdict in favor of Jones, the jury awarded Ramie $122,000, and the district court awarded her $43,607.85 for attorney's fees and costs, *see* 42 U.S.C. § 1988 (1982). The City, White, and Rush appeal. Holding that no constitutional right was violated, we reverse.

White, a sergeant on the City's police force, received a complaint from a citizen that a man dressed as a woman, representing himself as an undercover city police officer, had assaulted her son. White's investigation led him to Ramie. Ramie, a female, suffers from congenital adrenal hyperplasa, a condition that causes her to overproduce male hormones, giving her certain male secondary sex characteristics such as a deep voice and facial hair.

At the request of White, Ramie voluntarily appeared at the police headquarters for questioning. What occurred during the questioning was hotly contested at trial. According to Ramie, the questioning lasted approximately an hour and fifteen minutes, during which White and Rush repeatedly questioned and harassed her about her gender, threatened to send her to the penitentiary if she did not admit she was a man and act and dress accord-

ingly, and asked whether she believed in Jesus Christ. According to White and Rush, the questioning lasted about twenty minutes. During the interview, they questioned Ramie about her sex to determine her identity and inquired about her religious beliefs only after she had indicated that her present lifestye bothered her. Whtie and Rush, although with hindsight they confessed that they may have committed some indiscretions, denied that they threatened or harassed Ramie.

On appeal, the City, White, and Rush first argue that there was no evidence to support a finding that Ramie's constitutional right to privacy was violated.[1] Ramie argues that evidence of White and Rush questioning her about her gender and religious beliefs supported the jury's finding.

[1, 2] The Constitution protects individuals against invasion of their privacy by the government. *See Whalen v. Roe*, 429 U.S. 589, 598-602, 97 S. Ct. 869, 876-78, 51 L.Ed.2d 64 (1977); *Fadjo v. Coon*, 633 F.2d 1172, 1175-77 (5th Cir. 1981); *DuPlantier v. United States*, 606 F.2d 654, 669-71 (5th Cir. 1979), *cert. denied*, 449 U.S. 1076, 101 S. Ct. 854, 66 L.Ed.2d 798 (1981); *Plante v. Gonzales*, 575 F.2d 1119, 1132 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129, 99 S. Ct. 1047, 59 L.Ed.2d 90 (1979). The liberty interest in privacy encompasses two notions: the freedom from being required to disclose

1. Ramie argues that White and Rush waived any claim of insufficiency of the evidence by failing to move for a directed verdict at the close of all the evidence. *See Wells v. Hico Indep. School Dist.*, 736 F.2d 243, 248-49 (5th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3302 (U.S. October 23, 1984) (No. 84-545). The record clearly shows however, that all defendants moved for a directed verdict on the grounds that there was no evidence of a constitutional violation.

personal matters to the government and the freedom to make certain kinds of decisions without government interference. *Whalen*, 429 U.S. at 599-600, 97 S. Ct. at 876, 51 L.Ed.2d at 73. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Id.* at 600-02, 97 S. Ct. at 877-78, 51 L.Ed.2d at 73. There was no evidence that either police officer or the City disclosed any information obtained during the questioning. Therefore, Ramie's claim is that the asking of the questions about her gender and religious beliefs constituted a violation of her constitutional right to privacy.

[3] Te determine whether the questioning amounted to a violation of Ramie's right to privacy, this court must decide whether the invasion of privacy proved by Ramie outweighs the government's legitimate interests. *See id.*, 97 S. Ct. at 877-78, 51 L.Ed.2d at 74; *Fadjo*, 633 F.2d at 1176. In *McNally v. Pulitzer Publishing Co.*, 532 F.2d 69, 76-77 (8th Cir.), *cert. denied*, 429 U.S. 855, 97 S. Ct. 150, 50 L.Ed.2d 131 (1976), the court stated that the constitution is violated only by invasions of privacy involving the most intimate aspects of human affairs. For example, in *Whalen*, 429 U.S. at 602, 97 S. Ct. at 878, 51 L.Ed.2d at 75, the Court held that requiring the disclosure of persons receiving medications to state health agencies did not amount to an impermissible invasion of privacy, especially where there is regular disclosure of similar information to doctors, hospital personnel, and public health agencies. Gender and religious beliefs are generally not such intimate matters and are subject to public exposure. Ramie's license, which she showed to

White and Rush, indicated her gender. Furthermore, Ramie introduced evidence at trial that she regularly attended church. Weighed against this slight invasion of privacy stands the City's legitimate interest in questioning persons suspected of committing crimes. Although in retrospect some question may be determined to be irrelevant and not within the government's proper sphere of concern, police officers must have the freedom at least to ask the questions they believe will aid them in the investigation. Because we hold that the government's interest in conducting criminal investigations outweighs any invasion of Ramie's privacy, Ramie failed to present evidence that her constitutonal rights were violated.

An undercurrent running through this case, both at trial and on appeal, is that White's and Rush's *manner* in asking the questions violated her constitutional right to privacy. Ramie, however, cites no case to support the proposition that asking otherwise proper questions in an abusive and harassing manner amounts to an unconstitutional invasion of privacy. That abusive and harassing police questioning does not violate the constitutional right to privacy does not mean that persons so treated are without legal rights. Confessions obtained through coervice tactics are, of course, inadmissible. State tort remedies may also be available.

Because we hold that Ramie failed to prove that her constitutional right to privacy was invaded, we reverse and need not reach the remaining issues raised by the City, White, and Rush. Because there was considerable confusion at trial as to what is required to establish municipal liability under section 1983, however, we address that matter briefly.

In *Monell v. Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978), the Court held that local governments are liable under section 1983 where official policy or governmental custom is responsible for a deprivation of rights protected by the constitution. In *Bennett v. City of Slidell,* 728 F.2d 762, 770 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3419 (U.S. Dec. 4, 1984) (No. 84-797), this court noted that to establish liability based on the existence of a policy, *Monell* requires that the policy complained of must itself, as opposed to the way it is carried out by city employees, deprive a plaintiff of a constitutional right. *See, e.g., Monell,* 436 U.S. at 661-62, 98 S. Ct. at 2020-21, 56 L.Ed.2d at 617 (City of New York maintained policy which unconstitutionally compelled pregnant employees to take unpaid leaves of absence before required for medical reasons). The *Bennett* court also discussed municipal liability based on custom. The court stated that a section 1983 plaintiff could establish custom by proving that constitutionally objectionable behavior was sufficient in duration or frequency to the extent that it was acceded to by the maker of official policy. 728 F.2d at 766, 768.

[4] The latest writing by the Supreme Court is *City of Oklahoma City v. Tuttle,* ____U.S.____, 105 S. Ct. 2427, 85 L.Ed.2d ____ (1985). The plurality opinion authored by Justice Rehnquist would require that the damaging incident be "caused by an existing, *unconstitutional* municipal policy. . . ." ____ U.S. at ____, 105 S. Ct. at 2436 (emphasis added). Justice Brennan expressed a different view of the causal connection required between municipal policy and the constitutional deprivation: "[A] plaintiff must prove, in the broad causal

language of the statute, that a policy or custom of the city 'subjected' him, or 'caused him to be subjected' to the deprivation of constitutional rights." ____ U.S. at ____, 105 S. Ct. at 2439. However, both opinions reject the contention that a single incident of police misbehavior can establish a municipal policy or custom. Any abusive aspect of the interrogation of Ramie would not, therefore, alone prove an objectionable city policy.

To establish the City's liability, Ramie proved only her own interrogation and elicited testimony from Jones, the police chief, that it was within the police force's policy to ask suspects their gender and that, although there was no policy on discussing religion with suspects, he saw nothing wrong with White and Rush bringing up the subject. Ramie also introduced evidence of a civil rights judgment rendered against White for false imprisonment and cruel and unusual punishment.

[5] Under *City of Oklahoma City* and *Monell,* the above evidence was insufficient to establish the City's liability. Assuming that the police chief was delegated policy-making authority, there was no policy or custom attributable to him that was at all objectionable. Isolated events are not sufficient to establish custom. The tesimony of a city official might display a culpable attitude or an approval of unconstitutional conduct, but the testimony could not prove a policy by "ratification"—as has been argued here.

Because Ramie failed to introduce sufficient evidence to prove a violation of her right to privacy, the judgment is REVERSED.